

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

76-1392

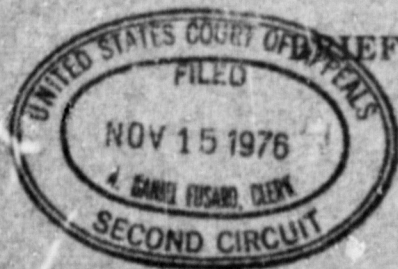
IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

PETER ALAN THOMAS VAN VLECK,
Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK.



CHIEF OF APPELLEE

RICHARD J. ARCARA,
United States Attorney,
Western District of New York,
Attorney for Appellee,
502 United States Courthouse,
Buffalo, New York 14202.

ROGER P. WILLIAMS,
Assistant United States Attorney,
of Counsel.

ENTRUSTED TO THE COURT PRINTING
A. GERALD KEMP, MANAGER
40 CENT ST., BUFFALO, N. Y. 14202
TEL. 848-0127

INDEX.

	Page
Preliminary Statement	1
Statement of Facts	2
Argument	7
The jury verdict was supported by the evidence	7
Conclusion	9

CASES CITED.

United States v. Detente, 199 F.2d 286 (7th Cir. 1952)	8
United States v. Efronson, 505 F.2d 104 (2nd Cir. 1975)	8
United States v. Gersh, 328 F.2d 460 (2d Cir. 1964), <i>cert. denied</i> 377 U.S. 992	8
United States v. Kahn, 366 F.2d 259 (2d Cir. 1966), <i>cert. denied</i> Pacelli v. United States, 385 U.S. 948	9
United States v. Tutino, 269 F.2d 488 (2d Cir. 1959) .	7

STATUTES.

Title 18, United States Code, Section 371	1
Title 18, United States Code, Sections 472 and 2	2

RULES.

Federal Rules of Criminal Procedure:

Rule 29	2
Rule 33	2

IN THE
United States Court of Appeals

For The Second Circuit

Docket No. 76-1392

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

PETER ALAN THOMAS VAN VLECK,
Defendant-Appellant.

On Appeal from a Judgment of Conviction in the
United States District Court for the
Western District of New York.

BRIEF OF APPELLEE

Preliminary Statement

The appellant, Van Vleck, together with four co-defendants were indicted for and convicted of various charges of dealing in counterfeit currency. Each of the co-defendants entered a plea of guilty to Count VII of the indictment which charged them with conspiring to sell falsely made and counterfeited obligations of the United States in violation of Title 18, United States Code, Section 371. Upon Van Vleck's trial, his accomplices, Lorraine Czora, Michael Gates and Edward Mosca, testified.

On May 6, 1976, the jury returned a verdict of guilty on Counts VI and VII of the indictment, the two counts involving Van Vleck. Count VI charged him with attempting to sell approximately \$175,000 in counterfeit Federal Reserve Notes and aiding and abetting in the attempted sale in violation of Title 18, United States Code, Sections 472 and 2. Count II charged the conspiracy as indicated.

In a timely fashion, Van Vleck moved for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure and, in the alternative, for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure. Prior to imposition of sentence, Judge Curtin denied both motions. On July 19 the Court then sentenced the defendant to the custody of the Attorney General for a period of five years on each count, to run concurrently. His Notice of Appeal was timely filed.

Statement of Facts

The testimony at trial established the facts as hereafter set forth. Edward Mosca and Michael Gates entered the printing business together sometime in 1970 under the firm name and style of United Offset Press located at 808 Main Street, Buffalo, New York (93, 171, 190)¹. Sometime around the end of January, 1973 Mosca received a phone call from Van Vleck whom he had known for some seven or eight years (191, 193). Van Vleck asked him to print up some stag tickets for a friend of his. Mosca printed the tickets and met Van Vleck at a local bar and there Van Vleck told him that he knew a way of making a lot of money if Mosca were willing to print counterfeit currency. Van Vleck told him he had a guy who was willing to buy it (193-194).

¹ All references to trial transcript unless otherwise indicated.

Mosca brushed off the idea; however, about a week later Van Vleck called and again asked if he would be willing to print counterfeit currency (195). Van Vleck then approached him on several other occasions. Finally, one night he and Mosca met at a local bar wherein Van Vleck assured him that there would be no risk. Van Vleck talked about printing approximately \$200,000 in counterfeit currency, the profits to be split equally (196). About the second week of February, Mosca agreed to print the money (197).

Mosca then persuaded his partner, Michael Gates, to join the venture. Mosca and Van Vleck then drove to Rochester, New York sometime between February 20 and February 22, 1973 to purchase the paper (200-201). Gates then photographed a \$10 and \$20 bill, converted the photographs to printing negatives and then burned them in offset plates which were used by Mosca to print somewhere between \$180,000 and \$200,000 in counterfeit \$10 and \$20 Federal Reserve Notes (172-173, A62-A63²). At the time Gates agreed, Mosca told him that their share of the split would be about \$4,000 (175). Gates testified that Mosca told him that the man who was going to set up the deal was an individual by the name of "Pete" (176).

Between the time Mosca printed the money and well into March, 1973, Van Vleck told him that his buyers would be in town soon and that the deal would be consummated. After some delay, Van Vleck told him he was tired of being held up by these people. He added that he had some other people that were interested in making the purchase. Van Vleck told Mosca, however, that he had to show this group some samples. Finally, around the third or fourth week of March, 1973, Mosca gave in to Van Vleck's demands and gave him a

² Reference to appellant's appendix.

package of \$2,500 in counterfeit \$10 and \$20 Federal Reserve Notes (176, 203-208).

Lorraine Czora, another accomplice who testified upon the trial, said that at about this time Van Vleck visited her one day at her apartment at 71 Fountain Park, North Tonawanda, New York and brought with him a package containing approximately \$1,500 in counterfeit \$10 and \$20 Federal Reserve Notes (20). At that time Van Vleck also brought with him some solution and showed Czora how to treat the currency (A53). She paid Van Vleck for that currency a price quoted by him although she did not recall the actual cost (A54-55).

On or about April 15, 1973 she attempted to pass one of the \$20 counterfeit bills she had so obtained at the Northtown Drug Store in the Town of Tonawanda, New York (Gov. Ex. 1, A56). She also apparently left three of the counterfeit \$10 bills behind when she moved out of her apartment, for on May 1, Secret Service Agent Timothy Gunning seized the bills from a cupboard in the apartment vacated by her (Gov. Ex. 4, 123-124).

During this same period of time Mosca and Van Vleck had many conversations wherein Van Vleck told Mosca that his buyers were rounding up the money so that they could make the purchase and that sooner or later they would be in town and the deal would be made (209-211). Finally, during the first part of May, Van Vleck told Mosca that the buyers were on their way, that they finally scraped up enough money and that the deal would be made by the weekend (211).

While Van Vleck was constantly assuring the printer, Mosca, that the buyers would be in town soon, the other accomplice, Lorraine Czora, was negotiating with Secret Service Agent William Ebert, using the alias of Joe Marine, for

the purchase of counterfeit currency. At one of their first meetings, Czora asked Agent Ebert if he were interested in purchasing some "funny money". Czora told Ebert she could get him about a thousand dollars in counterfeit \$10s and \$20s and that the price would be \$250 genuine currency (76). Czora then went to Van Vleck and told him she had a buyer for about \$1,500 in counterfeit. Van Vleck told her to pick it up at his house. He told her that the price would be \$250 genuine currency (A57). On May 4, 1973 an individual by the name of Beverly Zoeller gave Ebert a package containing \$1,178 in counterfeit \$10 and \$20 Federal Reserve Notes and told him to give Czora \$250 genuine currency (Gov. Ex. 5, 27, 77-78). When Ebert delivered the genuine currency to Czora she instructed him in the art of treating the money to make it passable (31).

Czora and Ebert then had many different meetings regarding his purchase of additional counterfeit currency. On May 10, 1973 she told Ebert that she had met with her source for the counterfeit and that her source advised her that any denominations in any amount were available and that Ebert could order whatever he wanted (86). Later that day Ebert placed an order, which Czora said amounted to some \$175,000. Czora then told Ebert that she would have to check with her source on price. Czora testified that her source was Van Vleck (31-32, 86, 88). Czora then testified that she met Van Vleck at a bar and at that time Van Vleck told her that he could put the package together, that it would take a couple of days that the price would be a certain percentage which she did not recall (32-33). Ebert then testified that Czora told him the cost would be \$12,000 genuine for \$200,000 counterfeit and that the order would be placed in a few days (88-89).

Between that day and May 16, 1973 there were numerous conversations between Czora and Agent Ebert wherein she

explained that it would be a few more days before her source could make delivery (90-92). Van Vleck, in the meantime, also had numerous conversations with Czora wherein he told her that there would be some delay (34-37).

Finally, on May 16, 1973, Mosca decided to go out and find Van Vleck and try to pin him down as to when the deal was going to go through. In this regard Mosca testified that he went to a bar known as Flo's Turf Club to seek out Van Vleck (212-213). There, he met a girl he had previously seen in Van Vleck's company, Lorraine Czora (37-38, 214). Czora told him Van Vleck had been there, that his drink was still on the bar (214-215). Mosca mentioned to her that Van Vleck owed him approximately \$30. Czora told him he ought not to feel bad because Van Vleck was holding her up on a deal worth thousands of dollars (215). Czora then told Mosca that she had guys in the city worth thousands of dollars on a deal that Van Vleck was supposed to consummate (215). When Mosca asked Czora what she was talking about she said, "You know, funny money" (216). Mosca then told Czora that he was the printer of the counterfeit and that the reason he never delivered it to Van Vleck was because Van Vleck never paid him for the counterfeit he had previously given to him (39).

Czora then placed a phone call to Agent Ebert and told him that everything was cleared up, that she could make delivery and that he was to meet her at 808 Main Street about 8:00 that evening (93). Czora then suggested to Mosca that they go to his place of business where she would introduce him to the buyer, Joe Marine (218-219).

Agent Ebert went there that night. There, Mosca explained to him that he was the printer of the currency, that he had printed the \$1,170 that Ebert had received earlier in the month and that the reason for the delay in delivery was the

fact that Lorraine Czora's man was not paying for the counterfeit (94). Mosca then told Ebert to return at 5:00 on May 17 and he would have a package of approximately \$175,000 in counterfeit \$10 and \$20 Federal Reserve Notes and that the price was going to be \$12,000 (95). Mosca, Czora and Gates then agreed to a three-way split of the \$12,000 (221).

The next day at the appointed time, Ebert returned with fellow agents in the surveillance. Ebert went into the premises, observed the counterfeit, gave his fellow agents the appropriate signal, and all agents converged to effect the arrests (98, 101, 119, 134).

Agent William Ebert also testified that, in his expert opinion, the \$20 Federal Reserve Notes seized at the Pharmacy (Gov. Ex. 1), the \$1,170 he purchased on May 4 (Gov. Ex. 4) and the money seized from 808 Main Street on May 17, 1973 (Gov. Ex. 5, 6 and 7) were counterfeit and all produced from the same plate (104-107). Edward Mosca also testified that he recognized all the money as the counterfeit he printed (222).

ARGUMENT

The jury verdict was supported by the evidence.

The appellant's only claim is that the jury verdict was contrary to the weight of the evidence. It is well settled that an Appellate Court should view the evidence most favorable to the government when a question is raised in a post-trial motion and thereafter on appeal as to whether or not a jury verdict should stand. *United States v. Tutino*, 269 F.2d 488 (2d Cir. 1959). His argument is that his accomplices, Edward Mosca, Michael Gates and Lorraine Czora, removed him from the attempted sale of counterfeit currency on May 16,

1973 when they agreed to sell the counterfeit currency to Agent William Ebert acting under cover as Joe Marine the following day.

While that is so, the record contains ample evidence from the testimony of the accomplices that Van Vleck was the prime mover and took an active role since at least the end of February, 1973 to attempt to find a buyer or buyers for the counterfeit currency. As this Court said in *United States v. Gersh*, 328 F.2d 460, 462 (2d Cir. 1964), *cert. denied* 377 U.S. 992, there is no less a meeting of minds because one or more of the accomplices deceives the other. So here, the fact that the accomplices, Mosca, Gates and Czora, deceived the appellant, Van Vleck, makes him no less guilty.

As to the substantive count, even if it could be argued that Van Vleck was cut out and could not be found guilty as a principal, he was also charged as an aider and abettor and the evidence is certainly sufficient to show that, at the very least he aided and abetted in an attempt to sell the counterfeit currency. See *United States v. Detente*, 199 F.2d 286 (7th Cir. 1952). In addition to being the prime mover and soliciting buyers for the counterfeit, he did sell \$1,170 in counterfeit to his accomplice Lorraine Czora who in turn sold it to Agent William Ebert.

With respect to the conspiracy count, this case is not at all unlike *United States v. Efronson*, 505 F.2d 104 (2d Cir. 1975) involving six defendants in a counterfeiting operation. The proof upon trial showed that one defendant, Pinto, was involved in the early stages of the conspiracy to the extent that he assisted in the making of plates and the defendant Efronson had a part in the arrangements to distribute the counterfeit money. There, this Court found sufficient evidence to sustain the convictions of both.

Assuming there was sufficient evidence to support the conspiracy count only, the sentence on both the substantive and conspiracy counts were concurrent and was within the statutory limit under the conspiracy count. In such a situation the conviction should be affirmed without regard to the sufficiency of the evidence on the substantive count. *United States v. Kahn*, 366 F.2d 259 (2d Cir. 1966), cert. denied *Pacelli v. United States*, 385 U.S. 948.

Conclusion.

The judgment of conviction should, in all respects, be affirmed.

Respectfully submitted,

RICHARD J. ARCARA,
United States Attorney,
Western District of New York,
Office and Post Office Address,
502 United States Courthouse,
Buffalo, New York 14202.

Roger P. Williams
Assistant United States Attorney,
of Counsel.

AFFIDAVIT OF SERVICE BY MAIL

State of New York)
County of Genesee) ss.:
City of Batavia)

RE: United States
vs
Peter Alan Thomas Van Wleck
76-1392

I, Leslie R. Johnson being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 12th day of November, 19 76
I mailed copies of a printed Appellee Brief in
the above case, in a sealed, postpaid wrapper, to:

10 copies to: A. Daniel Fusaro, Clerk
U.S. Court of Appeals, Second Circuit
New Federal Court House, Foley Square
New York, New York 10007

2 copies to: Robert E. Walsh, Esq.
537 Brisbane Building
Buffalo, New York 14203

at the First Class Post Office in Batavia, New
York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

Richard J. Arcara, United States Attorney, Att: Roger P. Williams, Asst.
U.S. Attorney

U.S. Court House, Buffalo, New York 14202

Leslie R. Johnson

Sworn to before me this

12th day of November, 19 76

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1977